

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 970 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RANJITKUMAR CHAKRAVARTI

Versus

CO-OPERATIVE BANK OF BARODA LTD.FEDERATION BUILDING,

Appearance:

MR SD PATEL for Petitioner

MR AKSHAY H MEHTA for Respondent No. 1

MR SR DIVETIA, A.P.P. for Respondent No. 2

SERVED for Respondent No. 3

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 25/04/97

ORAL JUDGEMENT

1. Ranjitkumar Chakravarti, original accused in Criminal Case No.2029 of 1982 on the files of Chief Judicial Magistrate, Baroda, has filed the present application.

2. Respondent No.1, Co-operative Bank of Baroda, has lodged a private complaint before the Chief Judicial Magistrate, Baroda, against the present revision applicant and one more person by alleging that they had misappropriated an amount of Rs.67,000/- by dishonestly encashing the cheques in the accounts standing in the name of the present revision applicant. The complainant had examined its Manager by way of leading evidence before charge. Besides, the oral evidence of the Manager of the complainant, the documentary evidence, including the confession statement given by the present revision applicant, was produced and considering the said material, the learned Chief Judicial Magistrate was pleased to pass an order on 21st January, 1984 to frame the charge against the present revision applicant and other accused under Section 406, 408, 409 and 420 read with Section 114 of I.P.C. The present revision applicant had challenged the said order of the learned Chief Judicial Magistrate by preferring a revision application before the Sessions Judge, Baroda, being Criminal Revision Application No.32 of 1984. The said Criminal Revision Application No.32 of 1984 was heard by the learned Additional Sessions Judge, Baroda and by his speaking order passed on 10th June, 1986, he rejected the same and, thereafter, the present application has been filed in this Court.

3. It has been rightly urged before me on behalf of both respondents No.1 and 2, namely, original complainant as well as the State, that the second revision application is not tenable. If the provisions of sub-section (3) of Section 397 of Code of Criminal Procedure are considered, then it would be quite clear that a party who has gone before the Sessions Judge to challenge the order in revision cannot again come before the High Court in revision to challenge the same order. But Section 482 of the Code of Criminal Procedure gives ample power to this Court to consider the orders in order to prevent the abuse of process of law or otherwise to secure the ends of justice. I, therefore, proceed to consider this application as an application under Section 482 of the Code of Criminal Procedure.

4. The learned Advocate for the revision applicant vehemently urged before me that, after the private complaint was lodged before the learned Chief Judicial Magistrate, the learned Chief Judicial Magistrate was pleased to pass order under Section 156(3) of the Code of Criminal Procedure, directing the police to carry out the investigation. He contended before me that, after passing such an order and without getting any report of

investigation from the police, the learned Chief Judicial Magistrate has proceeded to issue the process against the present revision applicant. It seems that the same submissions were also made before the learned Additional Sessions Judge, but in view of the observations made by the learned Chief Judicial Magistrate in his order passed on 21st January, 1984, which is at page 16, the said contention could not be entertained and allowed. It has been clearly mentioned by the learned Chief Judicial Magistrate that, after the police were directed to carry out the investigation under Section 156(3), the police had submitted the report and after considering the said report, the order of issuance of process was passed on 21st January, 1984. After the issuance of process, the present revision applicant had appeared and he had also taken part in the proceeding of recording evidence before the charge. Therefore, in the circumstances, the said contention raised on behalf of the revision applicant could not be accepted and entertained and the same is, therefore, rejected.

5. The next contention raised on behalf of the revision applicant is that, there is no sufficient material or evidence for framing the charge against the present revision applicant. The learned Chief Judicial Magistrate, who has recorded the evidence before the charge has found that the material and evidence before him were sufficient to frame the charge. The first revisional Court has also endorsed this view of the learned Chief Judicial Magistrate. Therefore, it is very difficult for this Court while exercising the powers under Section 482 of the Code of Criminal Procedure to come to a contrary conclusion. I will only like to mention here that the material and evidence before the learned Chief Judicial Magistrate also consisted of a confession/statement in writing under the signature of the present revision applicant admitting his liability of having caused a wrongful loss to the bank to the tune of Rs.67,000/- and towards the same liability, a part payment of Rs.5000/- was also made. Therefore, in the circumstances, I am unable to entertain the contention raised on behalf of the revision applicant that there is no material for framing the charge against the present revision applicant.

6. The third contention raised on behalf of the revision applicant is that the learned Chief Judicial Magistrate has ordered to frame a charge under Section 406, 408 and 409 as well as under Section 420 read with Section 114 of I.P.C. It is vehemently urged before me that the offences punishable under Sections 406 to 409

and offence under Section 420 cannot go together. The applicant has come before this Court before the actual framing of the charge against him and only after the order of framing the charge is passed. It must be mentioned that it is always open for a criminal Court to frame charges alternatively. A person can alternatively be charged under Sections 406 to 409 or under Section 420, I.P.C. It is true that the ingredients of Sections 406 to 409 and the ingredients of Section 420 are required to be considered. The offence under Section 406, 408 or 409 and the offence under Section 420 could not go together. But if the alternative charge is framed, it could not be said that an alternative charge is illegal or invalid. In the case of Sunil Kumar Paul v. State of West Bengal, AIR 1963 S.C. 706, the charge sheet was framed against the accused only under Section 409, but the Appellate Court had found the accused guilty of the offence punishable under Section 420 instead of Section 409 and had convicted the accused under that Section and the said decision has been approved by the Apex Court by observing as under :-

"Where a public servant was charged and tried by the Special Court for an offence under Section 409 I.P.C., but a charge under Section 420 I.P.C. could have been framed by the Special Court under Section 236 Cr.P.C. on the basis of the allegations in the charge sheet, the trial Court or the appellate Court can, in law, convict the accused of that offence instead of an offence under Section 409 I.P.C. if it be of the view that the offence of cheating had been established. This would be in accordance with the provisions of Section 237 Cr.P.C."

Therefore, the learned Judicial Magistrate will have to bear in mind the ingredients of Sections 406 to 409 as well as the ingredients Section 420 and then to consider as to whether the present revision applicant would be alternatively charged under Sections 406 to 409 and Section 420, I.P.C. Therefore, in the circumstances, I do not find any illegality or irregularity in the order passed by the learned Chief Judicial Magistrate. I, therefore, hold that there are no grounds to interfere with the order while exercising the power under Section 482, Cr.P.C. The application is, therefore, dismissed. Rule is discharged. Interim orders stand vacated.

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